S.B.Cr. Revision No. 132/2006
(Smt. Tara Oad & Ors. Vs. Kalu Oad)
Date of order : 25/05/2006

HON'BLE MR.H.R.PANWAR, J.

Mr. Deepak Menaria for the petitioners.

None present for the non-petitioner.

By order dated 02.03.2006 notice for final disposal was issued. Despite service of notice personally on 7.4.2006, no one appears for the non-petitioner.

Heard learned counsel for the petitioners.

This criminal revision petition under Section 397/401 Cr.P.C., is directed against the judgment and order dated 21.1.2006 passed by Judge, Family Court, Udaipur (for short 'the family court' hereinafter) whereby the application filed by the petitioners under Section 125 Cr.P.C. was allowed ex-parte by the family court and granted maintenance @ Rs.400/- per month in favour of petitioner No.1 and @ Rs. 200/- each in favour of petitioners No. 2 and 3. The petitioners, being aggrieved of the inadequate amount of maintenance allowance awarded to them by the order impugned, have filed the instant revision petition.

It is contended by the learned counsel for the petitioners that the petitioner No.1 herself appeared as AW-1 and produced two witnesses AW-2 Vajeram and AW-3 Smt. Vali. In the application under Section 125 Cr.P.C., as also in the statement of these witnesses, it has categorically been stated

that the non-petitioner having business of bricks kiln and earns about Rs. 8,000/- to Rs. 10,000/- per month. The statements of these witnesses remained uncontroverted as the non-petitioner neither appeared as a witness nor produced any witness to controvert the evidence produced by the petitioners and came with a case by giving a suggestion in the cross-examination that he is earning Rs. 50/- per day. The family court has not concluded as to what is the monthly income of the non-petitioner despite there being cogent and reliable evidence and awarded the maintenance @ Rs. 400/- per month in favour of petitioner No.1 and @ Rs. 200/- per month each in favour of petitioners No. 2 and 3.

Obviously, keeping in view the inflation in market rates, the amount awarded by the family court appears to be on lower side. The petitioner No.1 came with a case that she was turned out of her matrimonial home by the non-petitioner and also used to harass her, for which, a criminal case was registered against the non-petitioner for the offence under Section 498 IPC. Apart from these allegation, the petitioner also alleged that non-petitioner contacted second marriage and therefore, there is sufficient reason for her not to live with him. This fact also remained uncontroverted.

Be that as it may, keeping in view the uncontroverted evidence of the petitioner and her witnesses, in my view, the family court fell in error in awarding a meagre sum as maintenance. It is hard nut to crack to maintain three persons in such a meagre amount. In the reply, the non- petitioner has not disputed that the petitioner No.1 is his legally wedded wife and petitioners No. 2 and 3 were born from the loin of the petitioner. In the circumstances therefore, the non-petitioner is under a legal obligation to maintain his wife, son and daughter. There is evidence that non-petitioner failed to maintain his wife and children and neglected them. In this view of the matter, the judgment and order impugned deserves to be modified and the maintenance allowance awarded by the family court deserves to be enhanced.

Accordingly, the judgment and order impugned dated 21.1.2006 is modified to the extent that the petitioner No.1 is entitled for the maintenance @ Rs. 800/- per month, and each of petitioners No. 2 and 3 are entitled for the maintenance @ Rs.350/- per month, totalling to Rs. 1500/- per month.

With the above modification, the revision petition is disposed of.

(H.R.PANWAR),J.

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